

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SEAN DELANEY RALSTON,

Petitioner,

v.

**TEXAS COURT OF CRIMINAL
APPEALS,**

Respondent.

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Case No. 6:19-CV-576-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Sean Delaney Ralston, an inmate proceeding *pro se*, filed this petition for a writ of mandamus. The case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On December 6, 2019, the Magistrate Judge issued a Report and Recommendation (Docket No. 7), recommending that the petition be dismissed because the Court lacked jurisdiction to issue a writ of mandamus to the Texas Court of Criminal Appeals. *Id.* at 2. Petitioner filed objections on December 26, 2019. Docket No. 10.


In his objections, Petitioner asks the Court to grant relief by mandamus or through other avenues, such as habeas corpus. Docket No. 10 at 8. He does not appear to dispute the Magistrate Judge's conclusion that the Court is without jurisdiction to issue a writ of mandamus, but states that Respondent deprived him of due process. *Id.* at 7. The Court agrees with the Magistrate Judge and finds that it lacks jurisdiction to issue a writ of mandamus to the Texas Court of Criminal Appeals. *See, e.g., Cross v. Thaler*, 356 F. App'x 724, 725 (5th Cir. 2009); *Neuman v. Blackwell*, 204 F. App'x 348, 349 (5th Cir. 2006). The proper vehicle for seeking relief from a judgment of conviction is by a petition for writ of habeas corpus.

Having made a *de novo* review of the objections raised by Petitioner to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 7) be **ADOPTED**. It is further

ORDERED that the above-styled petition for mandamus relief is **DISMISSED WITH PREJUDICE** as to the seeking of mandamus relief against the Texas Court of Criminal Appeals in federal court, but without prejudice as to any other remedies Petitioner may have, including but not limited to his pending motion for leave to file a successive habeas corpus petition, currently pending in the Fifth Circuit Court of Appeals. All pending motions, including Petitioner's motions for appointment of counsel and for a stay of the case, are **DENIED**.

So **ORDERED** and **SIGNED** this **3rd** day of **March, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE